

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) CR 07-66
)
RONALD COLEMAN,)
)
Defendant.)

APPEARANCES:

ATTORNEY DANIEL C. TVEDT, Assistant U.S.
Attorney, Suite 400, 401 First Street S.E.,
Cedar Rapids, Iowa 52401, appeared on behalf of
the United States.

ATTORNEY E. DANIEL O'BRIEN, 425 Second Street
S.E., Suite 1010, Cedar Rapids, Iowa 52401,
appeared on behalf of the Defendant.

SENTENCING HEARING,

held before the Hon. Linda R. Reade on the 1st
day of April, 2008, at the Federal Building,
101 First Street S.E., Cedar Rapids, Iowa,
commencing at 3:25 p.m.

Patrice A. Murray, CSR, RPR, RMR, FCRR
Federal Building
101 First Street S.E.
Cedar Rapids, Iowa 52401
(319) 286-2324

1 THE COURT: Good afternoon.

2 MR. O'BRIEN: Good afternoon, Your
3 Honor.

4 THE COURT: The matter before the
5 Court, is United States of America versus
6 Ronald Coleman. This is criminal number 7-66.
7 This is a sentencing proceeding. Mr. Coleman
8 is here with his attorney, E. Daniel O'Brien.
9 Assistant United States Attorney Daniel Tvedt
10 is here for the United States. Daren
11 Schumaker, United States Probation Officer, is
12 here. Mr. Schumaker wrote the presentence
13 investigation report. The latest version is
14 dated January 29, 2008.

15 Mr. Coleman, do you recall being in
16 court -- let me get my dates here, too many
17 pieces of paper -- on September 28, 2007, and
18 pleading guilty to two federal crimes?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Specifically, do you
21 recall pleading guilty to Count 1 of the
22 indictment, charging you with conspiracy to
23 distribute 100 kilograms or more of marijuana
24 after a prior felony drug conviction?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: At the time of your plea,
2 did Judge Scoles go through the statutory
3 penalties for this offense?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: On Count 1, there's a
6 mandatory minimum sentence of ten years in
7 federal prison, and you can spend the rest of
8 your life in federal prison. As you know,
9 there is no parole in the federal system.
10 Probation is not an option on Count 1.
11 Supervised release would be eight years to
12 life. A fine of up to \$4,000,000. You would
13 have to pay a \$100 special assessment on Count
14 1. Do you recall being told that?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you also recall
17 pleading guilty to Count 2 of the indictment,
18 charging you with conspiracy to commit money
19 laundering?

20 THE DEFENDANT: Yes.

21 THE COURT: The punishment for this
22 offense is zero to twenty years in federal
23 prison. Probation is not an option because it
24 is not an option under Count 1. Supervised
25 release on Count 2 is zero to three years. A

1 fine of up to \$500,000. And you'd have to pay
2 a \$100 special assessment also on Count 2. Do
3 you recall the judge telling you that at plea?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand you are
6 in court today for the purpose of being
7 sentenced on your pleas of guilty to Counts 1
8 and 2?

9 THE DEFENDANT: Yes.

10 THE COURT: The Court has received
11 and read the presentence investigation report.
12 I have reviewed the sentencing memos filed by
13 the attorneys on behalf of their respective
14 clients, and that includes some letters of
15 support. The Court has reviewed the plea
16 agreement. The government had also filed a --
17 an information of their intent to seek enhanced
18 penalties, which was filed as document 13 in
19 the records of the court, and was disputed by
20 Mr. O'Brien on behalf of his client on
21 September 28 as document 17 in the records of
22 the court.

23 The record should reflect that I have
24 sentenced at least one co-defendant, Jillian
25 Coleman, who was a co-conspirator in this case.

1 Other than what's in the official records of
2 the court, the Court has no independent
3 information concerning Mr. Coleman.

4 Mr. Tvedt, have you had a chance to
5 review the presentence investigation report?

6 MR. TVEDT: Yes, Your Honor.

7 THE COURT: After having done so, any
8 remaining objections to the computation of the
9 advisory guideline sentence?

10 MR. TVEDT: No.

11 THE COURT: And I noticed in your
12 sentencing memo some concern about the
13 defendant backing off of a stipulation, and,
14 thus, the government potentially challenging
15 acceptance of responsibility for frivolously
16 contesting something that he had admitted
17 earlier. Has that been resolved, as far as you
18 know?

19 MR. TVEDT: Yes, Your Honor. The
20 Probation Office noted that in the addendum to
21 the presentence report. Mr. O'Brien in his
22 sentencing memorandum said he wanted to make
23 sure it was clear that that was not an issue to
24 be -- that would affect acceptance. We don't
25 believe that we will need to get into that --

1 THE COURT: All right.

2 MR. TVEDT: -- today.

3 THE COURT: Mr. O'Brien, have you and
4 Mr. Coleman been through the presentence
5 investigation report?

6 MR. O'BRIEN: Yes, we have, Your
7 Honor.

8 And with the Court's permission,
9 Mr. Coleman asked me a couple minutes ago if we
10 could have a Kleenex.

11 THE COURT: Sure.

12 MR. O'BRIEN: Thank you very much.

13 We had an opportunity to go through
14 the presentence report. Mr. Coleman -- I
15 mailed it to him. He is at Fayette. I drove
16 up there, I talked with him, met with him.
17 We -- I put down the objections. He didn't
18 read my objections after I wrote them until
19 they were filed. Then when the final
20 presentence report came out, I mailed it to
21 him. We talked on the telephone a couple of
22 times about it. And then I've met with Mr.
23 Coleman at the jail to discuss any remaining
24 issues.

25 We still do have some guideline

1 issues that I think we would like the Court to
2 resolve because I think they may have some
3 impact on where the Court sentences ultimately,
4 and also it may -- a couple of them may affect
5 his security classification --

6 THE COURT: All right.

7 MR. O'BRIEN: -- whether or not he
8 was involved and continuing to be involved in
9 the drug conspiracy after incarceration.

10 On the issue of role, just addressing
11 that briefly, we had specifically left open in
12 the plea agreement that role would be something
13 we weren't stipulating to. We stipulated to
14 the facts that are in there, and we agree
15 with -- we don't contest those facts.

16 Would the Court want me to address
17 the role first or the other guideline factors
18 first?

19 THE COURT: Well, let me look here.

20 I -- I think that the paragraphs you're
21 referring to are paragraphs 36, wherein
22 Ms. Jillian Coleman stated that she was told by
23 the defendant to continue to obtain and
24 distribute marijuana to obtain funds to secure
25 the release of Mr. Coleman, and you objected to

1 that. And I don't even know if the
2 government's pursuing that.

3 Are you, Mr. Tvedt?

4 MR. TVEDT: Your Honor, I think it's
5 uncontested the defendant would qualify as a
6 career offender no matter what ruling the Court
7 would make under the tax stamp law. As a
8 career offender, his guideline range would be
9 greater than anything determined under Chapters
10 2 and 3, so drug quantity, role, really don't
11 need to be decided today.

12 I don't plan to put on any evidence
13 for those items. I think the stipulation would
14 show the role, but I don't think we need to
15 make any findings on those because it's not
16 relevant to a career offender determination.

17 THE COURT: If he stipulated to role
18 and now is backing off of it, I think that's an
19 acceptance of responsibility problem.

20 MR. O'BRIEN: Your Honor, he never
21 stipulated to role.

22 THE COURT: All right. Well, he
23 stipulated to the facts.

24 MR. O'BRIEN: The facts.

25 THE COURT: That -- if you interpret

1 3B1.1(a) the way it's generally applied, I
2 think you might have a problem there. But if
3 you want to contest it, I'll be happy to make
4 the decision.

5 MR. O'BRIEN: On the role, I won't
6 contest it. We'll agree with it, as the facts.
7 I do want to note that under the same facts,
8 under the same people testifying, there's a
9 little disparity in this. In fact, it will go
10 to my other argument, in that Jill Coleman did
11 not receive any bump for role, but I'm not
12 disputing that.

13 The other issue would be the --
14 whether or not he was distributing drugs while
15 in jail, and we think that's something that the
16 record -- I documented in my brief. She talks
17 a couple of times with the authorities; it's
18 never mentioned. And only in front of the
19 grand jury, on rather leading and suggestive
20 questions, does she bring that up. And, Your
21 Honor, you had the opportunity to meet with
22 Jill Coleman and have her at sentencing. And
23 you noted that she had had several problems
24 with criminal convictions for theft,
25 dishonesty, specifically --

1 THE COURT: Well, let me re-focus you
2 a little bit here, because I think we're going
3 afar here into things we don't need to go into.
4 Does your client object to the base offense
5 level being a 28 and being held responsible for
6 605.79 kilograms of marijuana?

7 MR. O'BRIEN: That, I would object
8 to.

9 THE COURT: All right. What quantity
10 do you think your client should be held
11 responsible for?

12 MR. O'BRIEN: Well, I think a
13 quantity that would be good here, Your Honor,
14 and consistent is in the case of Jill Coleman.
15 It ended up that -- Probation Office must have
16 indicated this, the Court, Mr. Tvedt must have
17 suggested it -- that between March and November
18 2002, that Jill Coleman be held accountable for
19 six trips, 70 pounds, for 420 pounds, or 120.5
20 [sic] kilograms. And it's sort of like issue
21 preclusion, res judicata on that. I mean, the
22 Court's already decided it based on the same
23 issues, on the same facts, and now we're
24 changing it. She subsequently had those two
25 other trips after that time in which Probation

1 ended up assessing her quantities for those two
2 trips while Mr. Coleman was in jail, raising it
3 to 240. So I would have no problem really with
4 the 190.5 kilograms, or even if they wanted to
5 put one or two other trips in there at 70 each.

6 THE COURT: But you agree, do you
7 not, that the drug quantity in this particular
8 sentencing is not driving the sentence? It's
9 his --

10 MR. O'BRIEN: Right.

11 THE COURT: -- his criminal history.
12 So do you agree with Mr. Tvedt, that no matter
13 what I decided on the quantity of drugs or
14 adjustment for role in the offense, it would
15 not change his adjusted offense level or his
16 criminal history, because of his criminal
17 history?

18 MR. O'BRIEN: I agree with that, but
19 it's -- my other concern, and I don't want to
20 belabor it. I don't know how the Bureau of
21 Prisons treats everything, but I -- I have a
22 sneaking suspicion that he may be in a higher
23 classification if the time that -- while he was
24 incarcerated there's a court finding and a
25 presentence report to back it up that he was

1 involved with continuing to operate a
2 conspiracy. And so if we could strike those
3 two, I don't care.

4 THE COURT: Well, I think it's noted
5 that it's disputed, and the government isn't
6 pursuing, as I'm understanding it. So if it's
7 disputed, the Court cannot rely on it.

8 MR. TVEDT: That's correct. And just
9 so it's clear, the United States is not
10 claiming the defendant was actually
11 distributing drugs from jail.
12 Ms. Coleman -- and it's in the presentence
13 report, I think -- said that she was requested
14 by her husband to continue dealing so that they
15 could get money to try and get him out. That
16 was not successful. They didn't get the money
17 to get him out. We're not claiming that he was
18 dealing drugs from jail. I don't intend to
19 rely upon the drug quantity, don't intend to
20 rely upon the role, because it's not necessary
21 for the Court to make findings on that under
22 Rule 32.

23 THE COURT: Because the role is based
24 on the facts stipulated to, in part, that
25 defendant was involved with the transportation

1 of marijuana, funds between Arizona and Iowa,
2 by himself, Nathan Miller, Jillian Coleman,
3 Kenny Westbrook, and then the sale and fronting
4 of marijuana to five other people. That's what
5 the role is based upon.

6 MR. TVEDT: Correct, and that's --
7 the stipulation is there. The stipulation
8 would support a finding. But as I said, we
9 don't need to do that today under a career
10 offender guideline.

11 THE COURT: So I don't think there's
12 anything in the role of -- role in the offense
13 or the quantity of drugs that -- in which the
14 government is relying on disputed statements by
15 Jillian Coleman, so I don't know that I have to
16 do this because he's not going to get a break
17 in his sentence based on the quantity or if --
18 even if I didn't find he was an organizer
19 leader, it's not going to change his advisory
20 guideline sentence.

21 But if you want to put it on, I'll
22 hear it. But I've got to have evidence. And
23 then if the government's ready to put on
24 evidence, I'll take their evidence. If not,
25 I'm going to have to continue it, because I

1 don't think the government was on notice that
2 we were going to have any witnesses on this, or
3 any objection on it, because of the fact that
4 it's not -- these two things aren't driving the
5 sentence. So I guess I'll let you --

6 MR. O'BRIEN: Your Honor, if I could
7 be just heard.

8 THE COURT: Sure.

9 MR. O'BRIEN: The role, we agree with
10 that. The government -- I mean, Mr. Tvedt and
11 I have talked as recently as yesterday, and
12 they knew we were contesting that drug
13 quantity, and the one that's really bugging me
14 is the one after he's in jail. And so I think
15 the Court could just continue with the hearing.
16 If they don't put on evidence on that, then the
17 Court would have to find for the defendant on
18 those quantities. And then as a -- sort of in
19 trying to reach some agreement so we can go on,
20 then we're not going to object to the other
21 quantities. We'll just let them go.

22 THE COURT: Well, if we took out the
23 paragraphs that you don't agree with, 36, 37,
24 and 38, it would take his drug quantity down to
25 555 kilograms of marijuana, and that's still

1 the same base offense level. So if you're
2 worried about the allegation that he was
3 directing his wife to continue to deal from his
4 jail cell or if you're concerned he's being
5 responsible for trips that she took after he
6 was arrested, it's not going to affect the base
7 offense level. So, I'm sorry, I don't
8 understand why we're fighting about 50
9 kilograms of marijuana that aren't going to
10 make a bit of difference.

11 MR. O'BRIEN: It goes back to my
12 point, Your Honor, that I'm concerned about it
13 for prison, how the Bureau of --

14 THE COURT: Well, I cannot
15 second-guess what the prison is going to do.

16 MR. O'BRIEN: But I have an
17 opportunity --

18 THE COURT: This is a sentencing.

19 MR. O'BRIEN: I'm representing my
20 client, and I want to make sure that it's --
21 what the Bureau of Prisons gets is accurate.
22 And so that's the only reason that I'm really
23 contesting those two.

24 THE COURT: Well, your record is
25 made, because you objected to that in your

1 objections to the presentence report. I'm not
2 going to remove it because it was: This is
3 what she said.

4 I'm not going to rely on it, because
5 it's disputed. But if -- if we're going to
6 have a full-blown sentencing, that's fine.
7 Then the government is now on notice of that.

8 And, Mr. Tvedt, if you're ready to
9 proceed today, fine; otherwise, I'll give you
10 more time to get your witnesses here. And it
11 appears that we have to litigate the amount and
12 the role.

13 MR. O'BRIEN: Your Honor, if
14 Mr. Tvedt and I could have a moment, maybe we
15 could reach an agreement on that.

16 THE COURT: All right.

17 (Counsel conferred.)

18 THE COURT: What would you like to
19 do? Mr. Tvedt, are you ready to proceed, or
20 would you like a continuance to get your
21 witnesses here?

22 MR. O'BRIEN: Your Honor, I think it
23 would be grossly unfair to continue this,
24 because Mr. Tvedt's been on notice with what I
25 filed, what I told him, and -- that we were

1 going to contest it. And at this point, it's
2 foolish for them to even be trying to contest
3 it. He says it doesn't make any difference.
4 And my only concern is, the Bureau of Prisons,
5 if they see it, that he was dealing drugs while
6 in jail. And maybe that's a false concern, but
7 why would we need to litigate -- further
8 litigate that or put off the sentencing because
9 of it?

10 THE COURT: Well, I'm not going to --
11 I didn't know this was going to be an issue,
12 because a fair reading of all of this is that
13 the drug quantity does not make any difference
14 whatsoever, no matter what I decide, and
15 neither does role in the offense. I think it's
16 fair, when that's the case, for the government
17 to say, "Judge, you don't have to decide this."
18 That's happened in 4,562 trillion cases that I
19 have had in this court. If you want to push
20 this, I'm dandy with it. I am more than happy
21 to hear the evidence and make the findings. I
22 may not find for you, I don't know, because I
23 don't have the evidence. But I'm willing to
24 listen to the evidence. I'm going to give the
25 government a chance to get their witnesses here

1 so we can litigate this so that you can be
2 satisfied that the Court has made a precise
3 finding on this, even though it makes no
4 difference whatsoever.

5 MR. TVEDT: Your Honor, that's what
6 the government's position has been in our
7 discussion with the defense, that it has no
8 impact. Every sentencing, whether -- there's
9 always some information that goes to BOP and
10 the Court makes a note, "I did not rely upon
11 this information," so the BOP knows the Court
12 did not rely upon it. I don't see the need,
13 personally, to spend two days or whatever it
14 would take us to put on a full sentencing
15 hearing on something that is, as far as the
16 government is concerned, is irrelevant for the
17 Court's determination. Whether it was 1 ounce
18 of marijuana or 1,000 kilos, it's still going
19 to be determined because of his career offender
20 status.

21 THE COURT: And even if I disregard
22 the -- those two paragraphs, he's still the
23 same base offense level.

24 MR. TVEDT: Same base offense level.
25 The role in the offense, I would just put on

1 the stipulation, and then you've got enough
2 there for the role in the offense. I see this
3 as really going back to frivolously contesting
4 relevant conduct, which I thought we had
5 avoided with the defendant's sentencing memo,
6 which said he was not going to contest this
7 stuff because it was not relevant for a career
8 offender sentence. I took that from the way I
9 read the sentencing memo. If I was wrong on
10 that, I apologize. But I don't see a need to
11 continue this. I don't see a need to drag it
12 out when it's not relevant. And the Court can
13 find, as it does in every other case, that "If
14 it's not relevant, I don't need to consider it
15 and won't be considering it in determining a
16 sentence in this case."

17 THE COURT: I've done that in almost
18 every sentencing I have ever had.

19 All right. I'm going to give you
20 five minutes to get this straightened out. If
21 it isn't straightened out, I'm going to
22 continue it, give you a new date, and give the
23 government time to get the witnesses here.

24 MR. O'BRIEN: Your Honor --

25 THE COURT: Go ahead. Work it out.

1 I'll be back.

2 MR. O'BRIEN: Okay.

3 (Whereupon, a brief recess was
4 taken.)

5 THE COURT: We're back on the record
6 in United States of America versus Ronald
7 Coleman, criminal 7-66. What do the attorneys
8 want to do?

9 MR. TVEDT: Your Honor, I believe the
10 parties will agree and stipulate that the
11 Chapter 2 and Chapter 3 guideline computations
12 in the presentence report are correct, as for
13 role -- as for drug quantity at level 28 and
14 role at plus three. We would ask the Court not
15 to consider the evidence set forth in
16 paragraphs 36 through 38, the Jill Coleman
17 paragraphs, because those are in dispute and
18 Ms. Coleman was not called to testify. I
19 believe that then gets us past that drug
20 quantity and role issue.

21 THE COURT: All right. Does that
22 satisfy Mr. Coleman?

23 MR. O'BRIEN: Yes, it does, Your
24 Honor. And what my client -- before you went
25 out, my client had me pulled down to say --

1 just to let me know, "I don't want to risk
2 acceptance. Let it go," so it would be foolish
3 for me to be doing that. I was just concerned
4 about the Bureau of Prisons. And if I'm wrong
5 on that, I apologize, Your Honor.

6 THE COURT: All right. Then, as I'm
7 understanding the remaining issues, there's a
8 legal issue, is a drug tax stamp conviction a
9 prior felony offense; and then the motion for
10 departure/variance. Is that all that's left
11 then?

12 MR. TVEDT: Correct.

13 THE COURT: Is that correct,
14 Mr. O'Brien?

15 MR. O'BRIEN: Yes, it is, Your Honor.

16 THE COURT: All right. Mr. Coleman,
17 did you have a chance to read the presentence
18 investigation report?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And I think you have a
21 high school education, so I'm assuming your
22 reading skills are such that you are able to
23 read that by yourself?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Did you also have a

1 chance to discuss with your attorney all of the
2 issues that you had about the report?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Your attorney has made
5 some objections -- and you've heard the back
6 and forth between the lawyers and me -- on role
7 in the offense, drug quantity, acceptance of
8 responsibility. You understand that if you
9 want me to, I will have a full-blown
10 evidentiary hearing on those issues, and you
11 and your attorney, as well as the United
12 States, can present the evidence, and then I
13 will decide what the computation of the
14 advisory guideline sentence is.

15 Is that what you want me to do?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Okay. What do you want
18 me to do?

19 THE DEFENDANT: To continue today.

20 THE COURT: I'm sorry?

21 THE DEFENDANT: Continue with
22 sentencing today.

23 THE COURT: All right. And do you
24 want to stipulate that you are a base offense
25 level 28 on drug quantity, and that you should

1 get a four-level enhancement for role in the
2 offense as an organizer or leader, and that the
3 Court should disregard and not consider for any
4 purposes paragraphs 36 through 38 of the
5 presentence investigation report?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Then the
8 Court accepts the computation of the advisory
9 guideline sentence on those terms and
10 conditions. In making my findings, I paid no
11 attention whatsoever for any purpose to
12 paragraphs 36 through 38 of the presentence
13 report. Defendant has made it abundantly clear
14 that he disputes the allegations of Ms. Jillian
15 Coleman. The government has decided it does
16 not want to put on any evidence to try to
17 establish what's in those paragraphs because it
18 doesn't make any difference in the sentence,
19 and the Court is comfortable with that.

20 So I'm going to go through the
21 guideline computation on Count 1. Base offense
22 level is a 28. And defendant would have a drug
23 quantity of 400 kilograms but less than 700
24 kilograms of marijuana. I specifically have
25 not found 605.79 kilograms of marijuana because

1 there's some 50-odd grams -- or kilograms of
2 marijuana in dispute by the defendant. There
3 is a four-level increase for organizer or
4 leader. That gives us an adjusted offense
5 level for Count 1 of 32.

6 On Count 2, conspiracy to commit
7 money laundering -- and this is starting at
8 Page 14 -- base offense level is 28. There is
9 a two-level adjustment because defendant was
10 convicted under 18 USC 1956. Defendant gets a
11 four-level upward bump for organizer or leader.
12 So the adjusted offense level for Count 2 is a
13 34.

14 When we do the adjusted offense level
15 for the group, then the adjusted offense level
16 is a 34. There's a two-level reduction for
17 acceptance of responsibility. And so far, the
18 Court finds that Mr. Coleman has accepted
19 responsibility.

20 Assuming that the Court makes that
21 finding in the end, Mr. Tvedt, will the
22 government be moving for the one additional
23 level of acceptance?

24 MR. TVEDT: Yes.

25 THE COURT: All right. Then we get

1 to the Chapter 4 enhancements that are not
2 disputed. Under 4B1.1 defendant is classified
3 as a career offender because he meets all three
4 criteria: First, he was at least fifteen years
5 of age at the time he committed the offense of
6 conviction in this court; second, the offense
7 of conviction in this court is a felony, and it
8 is a controlled substance offense; and third,
9 defendant has at least two prior felony
10 convictions for either crimes of violence or
11 controlled substance offenses.

12 In this connection, there are two
13 burglaries that are relied on. They're
14 described in paragraphs 82 and 86 of the
15 presentence. The first one mentioned by
16 Probation is the '95 conviction for Burglary
17 Third in Linn County. The second one is the
18 1995 attempted Burglary Third in Linn County.
19 Because of those -- because of his criminal
20 history, the fact he's a career offender, we
21 have an offense level increased to 37.
22 Defendant then gets the three-level decrease
23 for acceptance, which gives us a total offense
24 level of 34.

25 Any objections to that, Mr. Tvedt?

1 MR. TVEDT: No, Your Honor.

2 THE COURT: Mr. O'Brien?

3 MR. O'BRIEN: The objection I would
4 have, Your Honor, is that if he didn't -- if
5 the drug stamp doesn't count as a prior felony,
6 that we will revisit these findings and make
7 new findings based on the drug stamp career
8 offender.

9 MR. TVEDT: Your Honor, the defendant
10 unenhanced would be a 5 to 40, which would be
11 career offender level 34. If the drug tax
12 stamp is a prior felony drug offense, then the
13 statutory maximum would be life, and the career
14 offender guideline would be a level 37 before
15 any acceptance reduction.

16 THE COURT: All right. So that is an
17 issue, a statutory issue, that we need to
18 address. And notice has been given by the
19 government of their intent to rely on the tax
20 stamp conviction as a prior felony offense for
21 purposes of enhancement under 21 USC Section
22 851.

23 I read your briefs on this, and I'm
24 ready to hear any argument that you have on
25 that issue.

1 Mr. Tvedt.

2 MR. TVEDT: Your Honor, I don't have
3 much more that I can add. Basically, as I
4 pointed out, the drug tax stamp is a felony.
5 It's a class D felony. And it's also a drug
6 offense. And I think the clearest way to show
7 it's a drug offense is that it prohibits
8 illegal conduct regarding drugs. And lesser
9 included offenses include possession,
10 distribution, and manufacture, which are all
11 drug offenses. So if a lesser included is a
12 drug offense, I would think the greater offense
13 as well would be a drug offense. And I would
14 rely upon the cases cited and the arguments
15 cited in my sentencing memo, which I think I
16 have updated from the earlier response I filed
17 regarding the drug tax stamp issue.

18 THE COURT: All right. Mr. O'Brien.

19 MR. O'BRIEN: Your Honor, I think I
20 thoroughly briefed this. And I'm confident
21 that the Court has reviewed the briefs and
22 carefully considered it. And unless the Court
23 wants me to reiterate some of those issues, I
24 would rely on the brief.

25 Just a couple of highlights would

1 be -- well, I don't want to go over the same
2 issues, but a couple things that really stand
3 out is, one, for drug offenses and for criminal
4 offenses in Iowa, the statute of limitations
5 for drug offense law is three years. An
6 indictment or information for a felony or
7 aggravated or serious misdemeanor has to be
8 brought within three years. The drug stamp is
9 a six-year statute of limitations. You can
10 possess it; it isn't the possession of the drug
11 that -- where you get the penalty. It is the
12 failure to buy the stamps. And so from that
13 regard, I do not think it's a prior drug felony
14 as defined by the statute.

15 And if there's any question on it,
16 the rule of lenity would apply here. And I
17 could not find any Eighth Circuit law on this
18 or any other circuits where we have ruled --
19 the courts have ruled that it is a prior drug
20 felony. And I guess it would be -- the Iowa
21 law is unique anyway, but I just don't think
22 it's been ruled on.

23 THE COURT: I don't think that this
24 specific statute has been ruled on; however,
25 there have been similar issues raised as to

1 other state drug stamp tax equivalents. The
2 one that stands out, I think, is United States
3 of America versus Trevino-Rodriguez, which is a
4 1993 case, dealing with the Kansas statute.
5 The Court, because this is a unique issue as
6 far as I could find, has prepared a sentencing
7 order that discusses the law, and it will be
8 filed within a few days. I didn't file it
9 because I wanted to see if there was anything
10 new that the parties had found since they
11 briefed the issue.

12 The Court now finds that the tax
13 stamp is a prior felony drug offense for
14 purposes of the 851 enhancement. And we'll
15 file that after this hearing.

16 All right. Anything else before we
17 get to the variance/departure issues?

18 MR. TVEDT: No, Your Honor.

19 THE COURT: So because of the prior
20 felony drug conviction, the penalty is as I
21 originally stated with Mr. Coleman at the
22 beginning of the hearing. It's a mandatory ten
23 and up to the rest of his life.

24 All right. I'm now ready to hear
25 from the attorneys as to what the appropriate

1 disposition is. There is a formal request for
 2 the Court to depart or vary. And generally, we
 3 would hear a departure motion at this point
 4 before we made the final calculation of the
 5 advisory guideline sentence, but because the --
 6 the factors relied on by defense are argued as
 7 both departure and variance, I think we'll just
 8 argue the motion in the context of what the
 9 appropriate disposition is when considering all
 10 the applicable factors under 18 USC 3553(a).

11 So, Mr. Tvedt, I'll hear your
 12 recommendation on sentencing, and then I'll
 13 have Mr. O'Brien argue his specific motion.
 14 And then if you want to reply to the motion,
 15 I'll hear again from you and again from
 16 Mr. O'Brien, if he'd like to talk, and then
 17 I'll move on to hear from Mr. Coleman.

18 MR. TVEDT: Your Honor, I -- when the
 19 sentencing memos were filed, those were based
 20 upon what we see in the letters of objections
 21 and the Probation Office's addendum to the
 22 presentence report. And I tried to address the
 23 issues that I saw in the defendant's letter.
 24 We believe that -- that the career offender
 25 sentence, something within that range, would be

1 appropriate. I'm not asking for any specific
 2 point within the range, but we believe that a
 3 sentence within that range is appropriate.

4 When we look at the defendant's
 5 criminal history, his criminal history as well
 6 shows he's a career offender. He would be a
 7 category VI with or without the career offender
 8 status. He has the two prior drug felonies.
 9 He's got the drug tax stamp, which was not used
 10 to -- for guideline purposes. He's got an OWI,
 11 which is a crime of violence. We didn't see
 12 anything in the defendant's letter of
 13 objections or his motion to vary or depart
 14 which the government thought would warrant a
 15 sentence outside the advisory guideline range
 16 determined by a level 37, minus three for
 17 acceptance, category VI.

18 THE COURT: All right. Mr. O'Brien.

19 MR. O'BRIEN: Your Honor, I guess,
 20 before argument, I would submit those exhibits
 21 I had sent to the Court --

22 THE COURT: All right.

23 MR. O'BRIEN: -- Exhibits A through
 24 F.

25 THE COURT: Would you like to submit

1 them as exhibits or just reference them because
2 they were filed with your sentencing memo?

3 MR. O'BRIEN: If referencing, that
4 would be fine.

5 THE COURT: All right. Any objection
6 to the Court considering Exhibits A through F
7 that were attached to the sentencing memo? I
8 think, just for clarity, I can disconnect mine
9 and you can offer them as formal sentencing
10 exhibits.

11 MR. TVEDT: I have no objection, Your
12 Honor.

13 THE COURT: Any objection?

14 MR. O'BRIEN: No, Your Honor.

15 THE COURT: All right. Then they're
16 admitted for purposes of the hearing.

17 (Whereupon, Exhibits A through F were
18 received.)

19 MR. O'BRIEN: As far as argument
20 goes, Your Honor, you've heard a lot of cases
21 since you've been hearing cases in federal
22 court. I mean, days like today, you probably
23 feel like you've been on for a long, long time.
24 But all of these cases that you've heard, all
25 of the cases you've decided, have occurred

1 since Mr. Coleman went into custody. They've
2 occurred since even the last sale by Jill
3 Coleman in November, because I do think -- I
4 think it was prior to your being sworn in.

5 But during that time, since then, Mr.
6 Coleman -- you know, Mr. Tvedt references it in
7 his statements about his, you know, criminal
8 history. We can't get around that. Sometime,
9 somewhere along the line, Ron ended up getting
10 things wrong in his mind. And he went through
11 his, you know, juvenile years, his teen years,
12 up to age 26, with just continuing to commit
13 criminal acts.

14 And then at some point, he was taken
15 into custody on this offense, in September of
16 2002. And somewhere along the line -- I don't
17 think he probably realized it when he was taken
18 into custody, but somewhere along the line,
19 with the taking away of his liberty, with the
20 lack of freedom, with all he was missing out,
21 some things started clicking in his mind. And
22 one thing was, he started realizing how his
23 actions, what he did, was affecting others.
24 You know, these are things he should have been
25 thinking about before, but obviously wasn't

1 very well. He could see how -- I mean, his
2 family life wasn't the ideal family life, but
3 his mom tried. She really tried. And he could
4 see how that hurt her and how his actions hurt,
5 you know, being with his child, how they even
6 affected other people who were involved in
7 criminal activity with him.

8 And I don't think he -- you know,
9 he's going to address the Court. He doesn't
10 know exactly why or what happened along the way
11 or what changed. But at some point, he got a
12 message that he needed to change some things.
13 And, I mean, if you look at his record, before
14 he goes in, he couldn't stay out of trouble for
15 more than a few months at a time. And
16 something happened in there, and something
17 happened in his mind.

18 And I've heard -- like, for
19 addiction, Your Honor, I have heard you with
20 some of my clients who had gone ahead and
21 reoffended with an addiction, you addressing
22 them and telling them that you really have to
23 make up your mind that you're not going to do
24 it again, and more than lip service. He did
25 something about it. And how do we know he did

1 something? I've outlined it in my briefs, and
2 I don't want to go over it again.

3 But I do think that in the, you know,
4 5.5 years now since this offense occurred,
5 he -- his case is very unique, is extremely
6 unique, I believe, in that -- for a couple -- a
7 number of reasons. One, I don't think the
8 government regularly waits this long before
9 filing a criminal charge. I mean, we're on our
10 third Attorney General at this point. Number
11 2, I don't think you normally see somebody with
12 his criminal background and his use of drugs
13 not offend within the first six months or a
14 year or, you know, for the time he's been out,
15 a couple -- two and a half years. Also, you
16 rarely get to see somebody in your court who's
17 actually been, as part of the relevant conduct,
18 sort of been held somewhat accountable for it
19 by getting him jerked into state -- you know,
20 into custody and having to, like here, do his
21 time on the drug stamp, do his time in Arizona,
22 and come out, and also know that, you know,
23 someday down the line, "I may get charged."
24 And so he did try to really reform, and I think
25 he's made a lot of steps in that area. And I'd

1 rely on my brief for the remainder of that
2 argument.

3 For disparity, I think a few of the
4 things that are different here is one among
5 co-defendants, co-conspirators. Mr. Miller,
6 Mr. Westbrook, they were never prosecuted
7 federally. They got to do -- Westbrook did a
8 little bit of time in Arizona, a few months.
9 As far as I know, nothing further.

10 Nate Miller, he got a suspended
11 sentence down there. He ended up continuing to
12 commit criminal acts, and he ended up being
13 eventually revoked on that. So he had to serve
14 a little bit of time, but it was only after a
15 couple more criminal acts, including the sexual
16 abuse.

17 Jill Coleman, you had her in here for
18 sentencing, and noted at her sentencing that
19 three of her offenses occurred after the fact.

20 And so there's a little bit of
21 difference in that. And then you look at the
22 difference in the charging. I mean, Jill
23 Coleman, she had an opportunity to go ahead and
24 plead guilty and not get the drug stamp filed
25 against her, you know, the same drug stamp

1 conviction that my client had.

2 THE COURT: You mean the 851.

3 MR. O'BRIEN: Right, excuse me.

4 THE COURT: Okay.

5 MR. O'BRIEN: And my client never had
6 that opportunity. I mean, he never had that
7 opportunity back in 2003 when they talked to
8 him a little bit, and I doubt that Mr. Tvedt
9 would contest that, you know. It -- it was
10 going to look at career offender, with the 851
11 filed, and actually, a larger quantity. So he
12 never had that opportunity. And then, if
13 you're concerned about, you know, treatment
14 different from other people throughout the
15 country, I don't think a lot of people have to
16 wait -- end up waiting this long and actually
17 serve time, so I think this case is unique from
18 that standpoint, and there could be a departure
19 on that ground.

20 Then I have the 5K.23 [sic] or 5K2.0
21 combination factor on all those things for the
22 departure or variance on the -- his time served
23 already. And I did read your opinion. That
24 sort of convinced me that I wasn't going to
25 argue too hard on the actual departure, so I'm

1 looking at that for a variance. If he had the
2 opportunity to do that, it could have been
3 running at the same time. The other thing is
4 that it's my understanding that, if an offender
5 has not been using drugs in the year prior to
6 his incarceration, that they do not qualify for
7 the 500-hour drug treatment program because
8 that's for people who have an addiction, and
9 that Mr. Coleman, by the fact that he's gone,
10 what, 5.5 years, and came out of jail and then
11 was actually tested and everything, hasn't
12 reoffended, that may disqualify him from the
13 reduction on that point.

14 THE COURT: I don't think that's
15 going to be a problem. Even if I were to
16 accept that when he wasn't under supervision,
17 he wasn't using drugs, by his own admission, he
18 was still drinking, and the 500-hour also
19 covers that. And even though he won't admit
20 it, he has an alcohol problem, so I think he
21 will still qualify.

22 MR. O'BRIEN: Yeah, I mean, he would
23 like to have that treatment, and we're asking
24 for that. You know, the -- my understanding
25 was that, you know, when he took the substance

1 abuse thing, it was like they considered it in
2 remission. And at that point, you know, he --
3 he was trying to get his driver's license back
4 for the first time since he was a teenager.
5 And he actually went ahead, and they didn't
6 require treatment, although, you know,
7 suggested it might be a good idea -- or no, no
8 treatment.

9 So from that standpoint, I think
10 we're a little different and that he should get
11 some credit, time knocked off his sentence, for
12 that. And I just think a variance from the
13 guidelines -- because, undoubtedly, if
14 Mr. Coleman -- if you were sentencing Mr.
15 Coleman back in 2002, 2003 before he actually
16 went through the state system -- and the
17 purpose of the prison system is somehow to
18 deter people from future criminal conduct and
19 to rehabilitate, although there's recognition
20 that you don't really get rehabilitated, but
21 here it happened. Mr. Coleman's made it a long
22 time.

23 And another thing that's added in
24 here was, when he came out of prison with that
25 CHINA that was pending, he was able to get that

1 resolved. But another issue that came up was,
2 you know, while he was in prison, the divorce.
3 The marriage had dissolved, and it was just
4 formalized after he got out. And so they ended
5 up sharing custody. And then at a point, a
6 guardianship was starting to get set up with
7 the mother, so Mr. Coleman was not getting his
8 regular visitation. And prior to this time, I
9 don't think -- you know, he tried to get his
10 visitation, but instead of going and committing
11 a criminal act where he would get in contempt
12 of court or get a criminal violation, he didn't
13 do that. And that's some indication that he's
14 really come a long ways.

15 So I'd ask for credit for the time
16 served, and departure on the other grounds, and
17 for all the other things that I have set out in
18 my sentencing memorandum and amendment thereto.

19 And so we just respectfully ask, Your
20 Honor, for you to really carefully consider
21 this, and I know you will. You now have the
22 opportunity that you didn't have earlier when
23 you were on the bench. You were pretty well
24 restricted to the guidelines. And, you know,
25 they were mandatory, and then they were

1 presumed reasonable, and now you have the added
2 flexibility. And it's hard for me to get out
3 of the box I was in before and think of it as
4 not mandatory or not presumed reasonable, and
5 I'm confident the Court will because, you know,
6 I -- you've not had any problems with many
7 decisions being overturned, so I'm confident
8 you'll give everything consideration.

9 THE COURT: All right. Mr. Tvedt, do
10 you want to respond to the variance/departure?

11 MR. TVEDT: Just a couple of points,
12 Your Honor. The statute the United States
13 deals with is five years, and I think the
14 defendant's memo says that we could have
15 indicted five years ago. Well, in a historic
16 conspiracy case, everything isn't done when the
17 load is delivered. In fact, Ms. Coleman
18 testified before the grand jury against Ron
19 Coleman, which allowed us to proceed. Certain
20 things have to fall into place before our case
21 is prosecutable. You may have probable cause,
22 but whether or not the government determines
23 its prosecutable at that point or at what point
24 is up to the government to decide and we have
25 five years to do it.

1 There was talk about no recent
2 offenses while he was out. As Mr. O'Brien
3 pointed out, the defendant was approached a few
4 years back to see if he wanted to cooperate. I
5 think in his sentencing memo, he said he
6 doesn't get a chance to cooperate because it's
7 stale information. Well, he had a chance, and
8 he turned that down through counsel, which is
9 his right and should not be held against him.
10 But it should also be made known that he's
11 known that he was under investigation. It was
12 just a matter of time before he was charged.

13 THE COURT: So, excuse me, he was
14 given the chance to cooperate at the time back
15 in November?

16 MR. TVEDT: Shortly -- November,
17 early 2003, within months after the delivery,
18 as indicated in the -- after he was
19 revoked -- I think it was around the time he
20 was revoked and sent back to Arizona, we had
21 some discussions, either at the time he was --
22 before he went back to Arizona to serve time or
23 not -- I'm not sure exactly where he was at.
24 But he -- we did have counsel appointed for him
25 through the Court, and worked with counsel, and

1 were told that cooperation was something he
2 didn't want to address at that point.
3 There was talk about the government
4 was seeking larger quantities at one time. And
5 that's true. As this Court has seen, numerous
6 marijuana/money laundering cases here in the
7 last year that have all been prosecuted,
8 investigated on parallel tracks. Whether or
9 not the Government believed they were all part
10 of one conspiracy or, as it turns out,
11 basically four or five parallel conspiracies
12 was something we learned through the course of
13 the investigation. That's one reason why we
14 didn't seek higher quantities, which -- which
15 is one thing Mr. O'Brien alluded to.

16 The other thing -- just one last
17 point on the disparity. The charging practices
18 are not a valid ground to depart or to vary.
19 Nathan Miller, who was talked about, who I
20 believe at this point is gravely ill and --
21 very seriously ill. But he was someone that
22 was interdicted in Arizona and cooperated, and
23 he worked out his charges with the Arizona
24 authorities. And his cooperation helped lead
25 to and was part of the originating facts of our

1 investigation with Ron Coleman.

2 The fact that people cooperate, as
3 Jill Coleman did and Nathan Miller did, are
4 things that are valid reasons for dissimilarity
5 or disparity in sentencings.

6 The United States believes that under
7 all of the reasons set forth by the defendant,
8 that still a sentence within the advisory range
9 would be appropriate in this case.

10 THE COURT: All right. Anything else
11 on the variance/departure or just generally on
12 disposition?

13 MR. O'BRIEN: Yes, just -- I do think
14 that my client's chance of recidivism is much
15 lower than a career offender one would suggest,
16 and that was one of the other arguments I made
17 in there that I didn't mention; and, you know,
18 that he has shown some things that would
19 indicate he isn't the risk that a typical
20 career offender would be; that he's, you know,
21 been employed; that he has been -- not
22 committed new offenses; and has not been using
23 drugs; that drug offenders are the lowest -- or
24 the second lowest across criminal history
25 categories; and then --

1 THE COURT: I'm sorry, I didn't
2 understand that.

3 MR. O'BRIEN: Across the criminal
4 history categories, it's my understanding that,
5 based on the fifteen-year study of criminal
6 history computation guidelines in May 2004,
7 that drug offenders are either the lowest or
8 second lowest likely to reoffend.

9 THE COURT: That doesn't sound right
10 to me. I have never heard that before, but it
11 might be somebody's statistics.

12 MR. O'BRIEN: And the other thing
13 would be that the career offender -- I
14 addressed in my brief as to that career
15 offender language is directed at the Sentencing
16 Commission, whereas the sentencing statute is
17 directed at the Court, and Senator Kennedy's
18 amendment was specifically rejected.

19 Thank you, Your Honor.

20 THE COURT: All right. Mr. Coleman,
21 this is the time in the proceeding when you
22 have an opportunity to speak. You are not
23 required to speak, but I'm willing to listen to
24 anything you'd like to say.

25 THE DEFENDANT: I'd like to take this

1 opportunity to -- to apologize to the
2 community, not only for my offense in 2002, but
3 my ongoing criminal offenses since I was a
4 juvenile. And my family. I never really
5 stopped to take the chance to realize how I'm
6 affecting and victimizing people throughout my
7 criminal life. And I think if I would have
8 went to prison a little sooner in life, it
9 might have helped, but it might not have. But
10 I took all of my chances in prison that they
11 offered for classes. It was like a -- being
12 hit in the head with a 2 by 4 pain, knowing
13 what I've done to my family, put my mom
14 through, and she's still -- she's still there
15 for me, even though I didn't listen to her.
16 I'm a different person today. I look
17 at life different. I still try to stay
18 positive thinking, and I'm ready to accept my
19 responsibility for what I've done in 2002. I
20 know that I deserve to go to prison for what
21 I've done. The time is in question. What I'm
22 scared of is, yeah, I might have been -- my
23 history might be terrible on paper, but it's
24 not who I am today.
25 Twenty years is a long time for

1 somebody to be sitting in prison, and get out a
2 rehabilitated person. My chances of getting
3 out of prison a positive person, as I am today,
4 and try to be lawful, is zero to none, even
5 though I'm going to try to stay positive.
6 That's a long time to be out of society and
7 then to be able to have the chance to come into
8 it.
9 I'd like to thank everybody that's
10 here for me today. I'd like to thank all my
11 new friends from Master Packing for all their
12 support. And I'd like to thank everybody. And
13 thanks to the Court for hearing me.
14 THE COURT: All right. Anything else
15 from the attorneys before the Court makes its
16 findings?
17 MR. TVEDT: No, Your Honor.
18 MR. O'BRIEN: Just one thing, Your
19 Honor. I submitted two letters. I had
20 volumes. I must have had about fourteen or
21 fifteen letters, but I picked the ones that I
22 thought were the most pertinent that really got
23 to the point. There are a lot of people that
24 did write on Ron's behalf, and I don't know
25 that they would have been that heartfelt with

1 how he was back in 19 -- 2002 and prior to
2 that.

3 THE COURT: All right. Then the
4 Court is ready to make its findings. In
5 arriving at a sentence, the Court is required
6 to consider all of the applicable factors under
7 18 United States Code Section 3553(a). The
8 only statutory factor that does not apply in
9 this case is the restitution factor. There is
10 no identifiable victim of this offense.
11 Society as a whole is victimized by drug
12 dealing.

13 In arriving at a sentence, the Court
14 works through it as follows. We talked about
15 the statutory provisions. And because of the
16 851 drug tax stamp, we do have a mandatory
17 minimum that we must deal with, and that's a
18 ten-year mandatory minimum on Count 1.
19 Defendant -- his advisory guidelines are total
20 offense level 34, criminal history VI, which
21 for Count 1 results in a range of a low of 262
22 months and a top sentence of 327 months. On
23 Count 2, it would be 240 months because there
24 is a twenty-year cap. Under the advisory
25 guidelines, probation is not an option.

1 Supervised release on Count 1, eight years. On
2 Count 2, two to three years. A fine of \$17,500
3 to \$4,500,000. And defendant would have to pay
4 a \$200 special assessment, \$100 on each count
5 of conviction.

6 The Court has considered the nature
7 and circumstances of the offense and the
8 history and characteristics of the defendant.
9 Defendant is in his early thirties; thirty-one.
10 He has a high school diploma. He has one
11 dependent. He owes past due child support for
12 that child. He has a long criminal history
13 beginning at age twelve. At age twelve he was
14 adjudicated and placed for Theft Third. First
15 he went to an academy; then he went to the
16 State Training School. He had many problems on
17 supervision.

18 His adult convictions started right
19 at age eighteen, with four thefts of -- Theft
20 Fourth or Theft Five; six alcohol related
21 charges; burglary and attempted burglary, two
22 felonies; interference with official acts;
23 assault causing bodily injury, stabbed victims
24 with a knife; and then the tax stamp felony,
25 which we've spent some time on. He had an

1 early onset of consuming alcohol, and although
2 his treatment records reflect that he doesn't
3 see it as a problem, he clearly has an alcohol
4 problem. All you have to do is look at his
5 past criminal history and see all the alcohol
6 related charges or charges where alcohol had
7 something to do with it. He's been an abuser
8 of street drugs and prescription drugs.

9 Were I to sentence him without
10 considering the variance and departure
11 arguments, I would place him at the higher end
12 of the range of 262 to 327 months due to his
13 long criminal history -- I would note some of
14 his criminal history wasn't even scored for
15 purposes of arriving at a criminal history
16 category because of the limitation at 4A1.1(c)
17 of the guidelines and the fact that his
18 juvenile offense was some time ago, and under
19 the advisory guidelines, is not scored for that
20 reason in arriving at a criminal history
21 category -- and also because of what I perceive
22 as a likelihood that he will recidivate.

23 I have considered carefully the
24 defendant's motion for downward departure or
25 variance filed as document 33. As I understand

1 the arguments -- and I'm just taking the
2 language right out of the document
3 itself -- the grounds are disparate treatment;
4 discharge of imprisonment; post offense
5 rehabilitation; preindictment delay; likelihood
6 defendant will commit other crimes; and then
7 recidivism is listed separately, but I think
8 that's the same concept; the fact that the
9 instant offense wasn't that serious; and then
10 the last, that the combination of all of these,
11 when considered, argue for a downward departure
12 or a variance.

13 So I looked at the arguments that
14 were made, and I just want to address briefly
15 first the disparate treatment. I think that
16 Mr. Tvedt responded to this quite well. The
17 co-defendants were treated differently, but
18 it's because their cases were different.
19 Jillian Coleman was not held to have been
20 involved with as much drug quantity as the
21 defendant. She started at a lower base offense
22 level and was held responsible for about half
23 of what Mr. Coleman is being held responsible
24 for.

25 Mr. Coleman got a role adjustment

1 under the advisory guidelines, and there was no
2 evidence that I was made aware of that
3 Julianne -- Jillian Coleman was entitled or
4 should be assessed any aggravating role
5 adjustment, so that made a big difference in
6 the advisory guidelines.

7 And most important of all,
8 Mr. Coleman's a career offender, and his
9 criminal history really takes him up beyond
10 where any of these other defendants were. He
11 didn't cooperate. His wife did. She made a
12 deal with the government, and that further
13 reduced her sentence.

14 With regard to the other people who
15 are mentioned in the presentence, it's the
16 government's decision who to charge and who to
17 let go to the state system. I would note that
18 the ones who went to the state system, at least
19 by my reading of the presentence, were not
20 leader/organizers, but some of them were
21 couriers, some of them distributed on the
22 streets of Cedar Rapids after being fronted
23 drugs by Mr. Coleman. So I don't think we have
24 any problem at all with Mr. Coleman being
25 picked on or being treated more severely than

1 any of his co-defendants. And there is no
2 basis that I'm aware of to depart on that basis
3 or to vary.

4 Then we get to the arguments on
5 rehabilitation and risk of recidivism, and I'm
6 going to kind of address these at the same
7 time. I would note that mostly defendant has
8 had a positive adjustment pretrial. Although
9 one contact with law enforcement was of
10 concern, he apparently handled it better. When
11 he had a disagreement with his former
12 girlfriend's new boyfriend at the former
13 girlfriend's residence, there was no violence,
14 and apparently, he walked away and promptly
15 reported it to his probation officer, which is
16 a good way to treat it.

17 But I do not see the claim of
18 extraordinary rehabilitation being borne out in
19 the facts, and these are my observations. The
20 only period that defendant was free and not
21 under court supervision or imprisoned was about
22 February of '06 to August of '07. During this
23 period, he did not have any new arrests that we
24 are aware of. During this period, he was still
25 drinking alcohol by his own admissions. He

1 admitted that he was still drinking as of July
2 the 2nd, 2007, in spite of several alcohol
3 arrests and other criminal conduct related to
4 alcohol. This is very dangerous for Mr.
5 Coleman, because of his own past history and
6 his family history of alcoholism.

7 We don't know during this period if
8 he was using drugs because there was no drug
9 testing, there was no supervision. Of concern
10 is the fact that his drug usage began at age
11 thirteen, and we know he was using just before
12 he went to prison in Arizona. So I'm hoping he
13 didn't use, but I cannot say one way or the
14 other because I don't know.

15 Although he was employed during this
16 period, he apparently did not spend his money
17 to catch up on his delinquent child support or
18 to pay the enormous amount of money owed to
19 Linn County on fines. It's over \$30,000 in
20 fines. And I don't know what he was spending
21 his money on, but his liabilities include
22 \$37,000 to Linn County, Iowa, for past costs,
23 fees, and fines associated with past traffic,
24 civil, and criminal matters. About the time of
25 his arrest, he apparently withdrew money from

1 his bank account to give to his mother to pay
2 for his daughter's care. That transfer of
3 assets, we don't know what that was exactly
4 spent for, except that, according to Probation,
5 it was not recoverable.

6 Defendant has a long and serious
7 criminal history, as I said, dating back to
8 when he was age twelve. I don't attach much
9 significance to the fact that there isn't an
10 arrest during this period from February '06 to
11 August of '07. There were other periods of his
12 life, specifically toward the end, where he
13 remained arrest-free for several months.

14 I note that any rehabilitation did
15 not start until after he knew that he was under
16 investigation on this offense. In other words,
17 I see a difference between people who -- who
18 take rehabilitative efforts and don't even know
19 that law enforcement is onto them. I think
20 that is a different situation than somebody who
21 knows they're in trouble and then doesn't --
22 and tries not to get into any more trouble. I
23 think people can change. I just think it is
24 too early to tell if the change in Mr. Coleman
25 is for the future.

1 As far as his employment, he was
2 employed during this period, but this was not a
3 change for him. He had held work assignments
4 in prior years when he was not in custody. So
5 I don't see that as anything extraordinary
6 because he had done it before.

7 Although he has had contact with his
8 daughter when not incarcerated, again, he still
9 owes child support, and I believe that
10 Mrs. Coleman's mom is now taking custody of the
11 child.

12 Thus, I don't view defendant as
13 qualifying in -- under my set of -- under the
14 way I evaluate this case, as being eligible for
15 a departure or variance because of
16 extraordinary rehabilitation. The fact that
17 he's arrest-free, when he knows he's already in
18 trouble, and the fact that he is employed is
19 not a change from other times that he has been
20 between prison sentences.

21 Next I want to discuss just briefly
22 the discharge from imprisonment. I do not find
23 this is an appropriate departure or variance
24 factor. To depart or vary on this ground would
25 run afoul of the factors at 18 USC 3553(a).

1 However, I will take this into consideration in
2 deciding on his ultimate sentence.

3 As far as the seriousness of the
4 instant offense, I think this is a very serious
5 offense. Distribution of marijuana is a
6 serious offense. And don't let anyone tell you
7 that marijuana is a nothing drug, because I sat
8 on this bench and on the state bench for almost
9 fifteen years, and many people start a very
10 serious and long hell with marijuana. So don't
11 let anybody tell you there's nothing wrong with
12 marijuana or it's a lesser drug.

13 In this case, defendant was an
14 organizer or leader of extensive criminal
15 activity that involved transportation of
16 marijuana and funds across state lines by
17 numerous co-conspirators. Because of his
18 history, I think there is a substantial risk of
19 recidivism. I do not agree that he's over the
20 hump.

21 Of concern also is at the same time
22 as he had an infant child he was dealing drugs
23 and -- he and his wife, both, when they have an
24 infant daughter. I don't know if it was taking
25 place out of his house specifically, but that

1 is of great concern.

2 In short, I won't be departing or
3 varying from the advisory guideline range
4 because, in my opinion, there's no basis for
5 doing so. I don't find any one factor is
6 appropriate for a variance or departure, and I
7 do not find that any combination of factors is
8 sufficient to support a variance or a
9 departure. So the Court declines to depart or
10 vary and denies the motion.

11 I want to just make a short record
12 that even if I am incorrect about the
13 computation of the advisory guideline sentence,
14 I still would impose the same sentence that I'm
15 going to impose in a few minutes for the
16 following reasons. In other words, if I just
17 look at the statutory factors and ignore the
18 guidelines or the computations that I have made
19 under the guidelines, the sentence I'm going to
20 impose is still the right sentence for these
21 reasons: Again, defendant was involved in a
22 conspiracy involving a large amount of
23 marijuana; funds were moved interstate; the
24 conspiracy involved at least four couriers and
25 at least five people to whom defendant fronted

1 drugs so that they could sell them on the
2 streets of Cedar Rapids; defendant was a
3 leader/organizer; he dealt drugs out of his
4 house where he -- I'm sorry, he dealt drugs
5 when he was living with his infant child and
6 wife. I don't know if specifically he was
7 dealing out of his house.

8 Defendant has a long and serious
9 criminal history beginning at age twelve. He's
10 been nearly continually in criminal
11 difficulties until the last few years. He has
12 seventeen criminal history points, but not all
13 of those count under the guidelines when fixing
14 the criminal history category. He has been
15 convicted of two violent felonies, the
16 burglaries that we talked about. And he has
17 been treated leniently in the past by the state
18 courts, has accumulated a substantial amount of
19 money in state fines, not held financially
20 accountable by those courts. And in spite of
21 being treated leniently, he has not reformed or
22 conformed his behavior but has continued his
23 criminal life-style. And I think he is at high
24 risk to recidivate. I don't know if he will.
25 I hope he won't. But I am not convinced that

1 his past is in his past.

2 So even if my computation of the
3 advisory guidelines is wrong for some reason,
4 my sentence would be just exactly the same for
5 the reasons stated.

6 I'm now ready to impose the sentence.
7 I will be imposing a guideline sentence after
8 considering all of the factors at 18 United
9 States Code Section 3553(a) that apply. So
10 within the range of 262 to 327 months, it is
11 the judgment of the Court that Ronald L.
12 Coleman is hereby committed to the custody of
13 the Bureau of Prisons to be imprisoned for a
14 total term of 262 months. This is the lowest
15 advisory guideline sentence. This term
16 consists of 262 months on Count 1 of the
17 indictment and 240 months on Count 2 of the
18 indictment. These terms will be served
19 concurrently with each other.

20 I recommend that defendant
21 participate in the Bureau of Prisons's 500-hour
22 Comprehensive Residential Drug Abuse Treatment
23 Program, and I recommend that he be designated
24 to a Bureau of Prisons's facility in close
25 proximity to his family, commensurate with his

1 security and custody classification needs.

2 Mr. Coleman, when you get out of
3 prison, you will be on supervised release for a
4 term of eight years. This term consists of
5 eight years on Count 1, and three years on
6 Count 2 of the indictment, with these terms to
7 be served concurrently or at the same time.
8 Within 72 hours of release from custody of the
9 Bureau of Prisons, you shall report in person
10 to the probation office in the district to
11 which you are released.

12 While you are on supervised release,
13 you shall comply with the standard conditions
14 of supervision. Those will be set out in the
15 judgment order. In addition, you must not
16 commit any federal, state, or local crimes.
17 You shall not illegally possess a controlled
18 substance. You shall not possess a firearm,
19 ammunition, a destructive device, or any
20 dangerous weapon. You shall cooperate in the
21 collection of a DNA sample.

22 You are a convicted felon, so even
23 when you're off supervision, you cannot possess
24 a firearm or ammunition, and if you do, you can
25 be prosecuted for federal or state offenses

1 relating to felon in possession of a firearm.

2 While on supervised release, you must
3 comply with the following special conditions
4 that will be implemented by Probation: First,
5 you must participate in and successfully
6 complete a program of testing and treatment for
7 substance abuse.

8 Second, you are prohibited from using
9 alcohol. You cannot use alcohol, and you
10 cannot go to bars, taverns, or other
11 establishments whose primary source of income
12 is derived from the sale of alcohol.

13 Third, because of your alcohol
14 history, you must participate in the Remote
15 Alcohol Testing Program during any period of
16 your supervision. You must abide by all rules
17 and regulations of that program and pay for the
18 costs of that.

19 Fourth, you must participate in a
20 mental health evaluation and/or treatment
21 program and take all medications prescribed to
22 you by a licensed psychiatrist or a physician.
23 And lastly, you will be subject to the standard
24 search conditions of this court. Any search
25 will be based on reasonable suspicion and

1 conducted in a reasonable manner. And the
2 specifics of the condition will be set out in
3 the judgment order.

4 I make the finding that you do not
5 have the ability to pay a fine or make
6 community restitution. You shall pay to the
7 United States a special assessment of \$200.
8 And the Court finds that it was paid on October
9 5, 2007, and will be reflected in the judgment.

10 Do we need a forfeiture allegation
11 here?

12 MR. TVEDT: No, Your Honor.

13 THE COURT: All right. Pursuant to
14 18 United States Code Section 3143(a)(2), you
15 are hereby immediately remanded to the custody
16 of the United States Marshal.

17 Mr. Coleman, you do have a right to
18 appeal if you disagree with the judgments I've
19 made and the sentence I've imposed. And the
20 way you would do that is to file a written
21 notice of appeal with the Clerk of Court here
22 in the United States District Court for the
23 Northern District of Iowa at Cedar Rapids,
24 Iowa. If you do not file a written notice of
25 appeal within the next ten days, you forever

1 give up your right to challenge this judgment
2 and sentence. If you would like to appeal, and
3 you cannot afford the services of an attorney,
4 the Court will appoint an attorney to represent
5 you on appeal.

6 Mr. Tvedt, I don't think we have any
7 counts to dismiss?

8 MR. TVEDT: No, Your Honor.

9 THE COURT: All right. Anything
10 else, Mr. Tvedt?

11 MR. TVEDT: No.

12 THE COURT: Mr. O'Brien?

13 MR. O'BRIEN: Yes, a couple things,
14 Your Honor. I'd just like you to reconsider a
15 couple of findings. One, you indicated that he
16 did not pay any child support, did not pay on
17 his fines --

18 THE COURT: He didn't pay his
19 arrearage. He's had some deducted from his
20 paycheck, but he hasn't made up the arrearage
21 by making additional payments.

22 MR. O'BRIEN: Right. I mean, he was
23 having to pay -- he had to pay on the fines in
24 order to get his license back. There's money
25 that's being taken from his check towards child

1 support, towards the fines, towards his other
2 obligations.

3 THE COURT: But he hasn't paid any
4 extra on his child support.

5 MR. O'BRIEN: He hasn't --

6 THE COURT: Just whatever is withheld
7 from his paycheck.

8 MR. O'BRIEN: Yeah, he hasn't had the
9 ability to pay that. I mean, he's been paying
10 the 350.

11 Then the other thing was on the -- in
12 your consideration of departure/variance, my
13 understanding was that you weren't going to
14 rely on the guideline calculations as to
15 quantity and as to role, but then you ended up
16 talking about disparate treatment, that the
17 quantity level of his was higher than Jill
18 Coleman's.

19 THE COURT: Well, it was.

20 MR. O'BRIEN: That's one reason he
21 was treated differently. And one of the
22 reasons I didn't protest any of those issues is
23 because it wasn't going to be a --

24 THE COURT: Mr. O'Brien, please, is
25 there a difference between being held

1 responsible for the range of 400 to 750 and
2 being held responsible, like Mrs. Coleman, for
3 100 to 400 kilograms? Is there a difference
4 there?

5 MR. O'BRIEN: I don't know. It's
6 just that you had mentioned that as one of your
7 reasons --

8 THE COURT: Yes, because --

9 MR. O'BRIEN: -- for being treated
10 differently.

11 THE COURT: -- because there's a
12 different drug quantity. And you agreed that
13 the drug quantity, base offense level, was a 28
14 for your client. It was a 26 for Mrs. Coleman.

15 MR. O'BRIEN: But in part, because,
16 to my understanding, it wasn't going to be
17 considered, that the career offender --

18 THE COURT: I have to consider it.
19 And you stipulated that the base offense level
20 on drug quantity was a 28. You also stipulated
21 to the role adjustment. Now, I can go back and
22 read that to you, but you stipulated to that.
23 You said it wasn't an issue. I said I would
24 not rely on specific paragraphs in the
25 presentence report, specifically -- let me do

1 it again -- paragraphs 36, 37, and 38. The
2 total of those two together is about a
3 50-kilogram difference. If I don't rely on it,
4 which I didn't, it doesn't change his base
5 offense level. He's still within the same
6 range. So you tell me what the problem is.

7 MR. O'BRIEN: Well, my understanding
8 from what you were saying before that, when you
9 were sort of exasperated with me, that I was
10 even, you know, going to argue that because it
11 wasn't going to affect the sentencing range or
12 the sentence -- now, if it didn't affect the
13 sentence or your reasons for departure, I can
14 live with that. And I guess I'll live with
15 anything.

16 THE COURT: Well, how can I ignore
17 the fact that he's got a base offense level
18 based on drug quantity of 28, and she has a 26?
19 How can I ignore that? That's a difference in
20 drug quantity. You agreed to the 28. You
21 contested 50 kilograms. Fine. It doesn't make
22 any difference. He's still a 28. It doesn't
23 make any difference in his sentence. I do not
24 understand why, after everything we've been
25 through today, we're back stuck on the same old

1 issue that doesn't make any difference.

2 And I didn't rely on those
3 paragraphs. I told you I wouldn't. And if you
4 read what I wrote -- what I dictated into the
5 record, I didn't rely on it.

6 MR. O'BRIEN: There's other
7 paragraphs I would have contested, and I
8 withdrew those based in part --

9 THE COURT: Well, Mr. O'Brien, what
10 have we been doing here today? Trying to
11 narrow the issues. You told me those were the
12 paragraphs. You did not tell me at any time
13 that you or your client objected to the other
14 paragraphs. On that basis, we went forward
15 with the sentencing. I didn't give Mr. Tvedt
16 an opportunity to put on his clients -- or his
17 witnesses. What is going on here? After we've
18 reached this agreement, now you're
19 backpedalling and trying to change the
20 agreement.

21 MR. O'BRIEN: No, I -- it's just my
22 understanding, and from what I had in the
23 record and from what I had in my objections, I
24 was objecting to other paragraphs. And the
25 only -- the reason I ended up agreeing to the

1 other part, with the stipulation, which I
2 entered into, was because -- my understanding
3 was, it wasn't going to matter to your
4 sentence. And I don't believe it would have
5 mattered to your sentence --

6 THE COURT: It didn't matter to my
7 sentence because --

8 MR. O'BRIEN: -- or to a departure
9 under any ground.

10 THE COURT: I have to respond to your
11 argument that I'm treating people differently
12 that are similarly situated. I have to say
13 that she scored a 26, and he scored a 28. That
14 is not relying on any contested paragraphs.
15 It's your stipulation that he's a 28. He's
16 somewhere in that range. And my understanding
17 was, you had three paragraphs you objected to.
18 The difference is 50 kilograms. It doesn't
19 matter. It doesn't matter for the base offense
20 level. It doesn't matter for the ultimate
21 sentence. Because the amount does not drive
22 the sentence.

23 I can't ignore the fact in making my
24 findings that your client was involved in 400
25 to 700 kilograms of marijuana, making him a

1 level 28. That's a lot of dope.

2 MR. O'BRIEN: Would it have mattered
3 if --

4 THE COURT: I am not going to answer
5 your questions on that. If you feel that you
6 have somehow been mistreated, you can file a
7 motion and tell the Court in writing what I did
8 that you didn't agree to today. I am not going
9 to waste any more of my time going over the
10 ground that we've been arguing about since 3:30
11 this afternoon that you agreed to. I do not
12 understand what is going on here. So if you
13 think I've done something that was contrary to
14 the agreement, file your motion, but this
15 hearing is concluded.

16 (Proceedings concluded at 5:06 p.m.)
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C E R T I F I C A T E

2 I, Patrice A. Murray, a Certified
3 Shorthand Reporter of the State of Iowa, do
4 hereby certify that at the time and place before
5 the Honorable Linda R. Reade, that I reported
6 in shorthand the proceedings of said hearing,
7 reduced the same to print by means of
8 computer-assisted transcription under my
9 direction and supervision, and that the
10 foregoing transcript is a true record of all
11 proceedings had on the taking of said hearing
12 at the above time and place.

9 I further certify that I am not related
10 to or employed by any of the parties to this
11 action, and further, that I am not a relative
12 or employee of any attorney or counsel employed
13 by the parties hereto or financially interested
14 in the action.

13 IN WITNESS WHEREOF, I have set my
14 hand this 1st day of May, 2008.

Patrice A. Murray

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